IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

FAO.No. 306 of 2005()

OPA.174/2005 of D.C. & SESSIONS COURT,KOLLAM
OS.852/2001 of PRL.M.C., KOLLAM

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APPELLANT/PETITIONER.

R.RADHA, AGED 42 YEARS, NADASWARAM
BHAVAN, KOTTAMKULOANGARA DEVASWOM,
CHAVARA VILLAGE.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS: RESPONDENT.

S.SOMAN, AGED 48 YEARS,
SANGEETHA BHAVAN, KALARI PADINJATTATHIL,
THIRUMULLAVARAM, KOLLAM.

BY ADV. SRI.K.KARTHIKEYA PANICKER
SMT.DAYA K. PANICKER

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

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F.A.O.No.306 of 2005

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Dated this the 18th day of December, 2007

J U D G M E N T

Admitted.

Appeal itself is heard and disposed of.

The petitioner in O.P.(Appeal) No.174/2005 which arose from O.S.No.852/2001 on the file of Munsiff Court, Kollam, is the appellant in this appeal. The respondent herein filed the suit against the appellant for money. The suit was decreed. Challenging that decree, the appellant filed the appeal as an indigent person, contending that she was not in possession of assets which is sufficient to raise as to Rs.6,790/- so as to pay the court fee. The respondent raised a contention that the appellant is having sufficient means to pay court fee. The main objection raised was that the appellant was working as an employee in Devaswom Board and she was getting an amount of Rs.5,000/- as salary. Though, no objection was raised by the respondent, the lower appellate court dismissed the application on the ground that the appellant is getting a salary of Rs.5,000/- from

Devaswom Board. According to the appellant, though her salary is around Rs.5,236/-, she is having only a take off salary of Rs.1,630/-. She is a widow having two children (two daughters) residing in a rented house. According to the appellant, she has absolutely no means to pay the court fee and, if she is compelled to pay the court fee, herself and her children will have to starve. The State had not filed any counter contending that the appellant has any means.

2. The lower appellate court was not justified in dismissing the petition. Payment of Court fee is a matter between the litigant and Government. So the State had not raised any objection. So this appeal will have to be allowed without prejudice to the right of the respondent-State to move the lower appellate court for withdrawal of permission granted to the appellant to sue as an indigent person in accordance with the provision contained in Order XXXIII Rule 9 of C.P.Code.

3. In the result, the appeal is allowed. The order passed by the lower appellate court rejecting the prayer of the appellant to permit her to prosecute the appeal as an indigent person is set

aside. But it is made clear that the appellant can move lower appellate court for withdrawal of the permission granted to the appellant to prosecute the appeal as an indigent person in accordance with the provisions contained in Order XXXIII Rule 9 C.P.Code.

K.PADMANABHAN NAIR,
Judge

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